



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



275703

REPLY TO THE ATTENTION OF

VIA FACSIMILE (513) 852-8222

David Schmidt, Esq./ Jeffery Harmon, Esq.
Clarke Container, Inc./Clarke's
Incinerator's, Inc.
537 E. Pete Rose Way
Cincinnati, OH 45202

Re: **SPECIAL NOTICE OF LIABILITY,
ORPHAN SHARE OFFER, and
TOLLING AGREEMENT**
Skinner Landfill Superfund Site
West Chester, Ohio

Dear Sir or Madam:

The United States Environmental Protection Agency (U.S. EPA or Agency) has undertaken response actions at the Skinner Landfill Superfund Site, located ½ mile east of Interstate 75 on the Cincinnati-Dayton Road in the Town of West Chester, Ohio (the Site), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 (CERCLA). These actions, which included the implementation of a Remedial Investigation (RI) and Feasibility Study (FS), have documented the release or threatened release of hazardous substances, pollutants, and contaminants at the Site. The RI was completed at the Site in May 1991; the FS was completed in April 1992. In accordance with the requirements of Section 104(b) of CERCLA, the Remedial Investigation (RI) Report describes the U.S. EPA's findings on the nature and extent of contamination at the Site. The Feasibility Study (FS) Report considered alternatives necessary to address the conditions at the Site.

Following a public comment period on the remedy recommended by U.S. EPA and concurred in by the Ohio Environmental Protection Agency (Ohio EPA), U.S. EPA issued an interim Record of Decision (ROD) on September 30, 1992 in order to contain some of the risks associated with the Site. Subsequent to the issuance of the interim ROD, a Unilateral Administrative Order (UAO) for the performance of the remedial

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actions identified in the interim ROD was issued to several potentially responsible parties (PRPs) at the Skinner Landfill facility. Many of these parties complied with and completed the remedial actions specified in the UAO; there were also, however, several UAO Respondents that did not comply with the UAO's provisions.

After a subsequent public comment period, U.S. EPA issued a final ROD, selecting the appropriate remedial actions to be completed at the Site. This final ROD, on which the State of Ohio has given its concurrence, was signed by the Regional Administrator of Region 5, U.S. EPA on June 4, 1993. All of the documents discussed above are available for public inspection in the administrative record for the Site, which is located at two branches of the Union Township Library, one at 7900 Cox Road in West Chester, Ohio, and the other at 9113 Cincinnati-Dayton Road, also in West Chester. The administrative record is also located at U.S. EPA's Region 5 Records Center, 77 W. Jackson Boulevard, 7th Floor, Chicago, Illinois 60604-3590. A copy of the interim Record of Decision and the final Record of Decision may be obtained from Region 5 Assistant Regional Counsel Sherry L. Estes, whose address and telephone number are given at the conclusion of this letter.

Subsequent to the issuance of the final ROD, U.S. EPA and several complying UAO Respondents entered into an Administrative Order by Consent (AOC), effective March 29, 1994, for the design of the remedial actions selected in the final ROD. The following companies signed the AOC: Dow Chemical Company, Ford Motor Company, Monsanto Company, Morton International, Inc., PPG Industries, Inc., Velsicol Company, and GE Aircraft Engines (collectively "AOC Respondents"). Pursuant to the AOC, the AOC Respondents developed the Remedial Design for the remedial action. U.S. EPA approved the Remedial Design on June 18, 1996.

**INITIATION OF ADR ALLOCATION PROCEDURE; CONTRIBUTION ACTION
FILED BY AOC RESPONDENTS; CASE MANAGEMENT ORDER**

On January 8, 1997, U.S. EPA sent general notice letters to most of the recipients of this letter, inviting parties which the Agency considers to be PRPs at the Skinner Site to participate in an alternative dispute resolution (ADR) allocation procedure in order to allocate responsibility for clean-up costs at the Site. Other parties, primarily the

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parties that U.S. EPA alleges may be responsible for response costs at Skinner due to transshipments from the Chem Dyne Superfund Site ("Chem Dyne transshipment parties"), were subsequently sent a Notice of Potential Responsibility. At about the same time that U.S. EPA sent notice of the initiation of the ADR allocation procedure, the AOC Respondents, with the exception of the Monsanto Company, filed a contribution lawsuit against most of the parties which were recipients of the January 8, 1997 letter, as well as certain municipalities which U.S. EPA, pursuant to its policies regarding municipal solid waste, did not notice. This contribution lawsuit sought contribution for the costs expended by the AOC Respondents in complying with the UAO issued after the interim ROD, as well as the costs of developing the Remedial Design under the AOC. The Chem Dyne transshipment parties were not made parties defendant to the contribution lawsuit.

Although the ADR allocation process was initiated and convened by U.S. EPA, the Agency was not a party to the allocation, and did not participate in selecting the allocator. The judge in the contribution action issued a Case Management Order (CMO) that made the allocation process mandatory for parties to that litigation; various of the Chem Dyne transshipment parties, although not subject to a court order to participate in the ADR allocation process, nonetheless took part in the process on a voluntary basis. Since U.S. EPA was not a party to the allocation process, the Agency only has available to it liability information developed outside the context of the allocation procedure.

In October 1998, John Barkett, the third-party neutral, issued a report setting forth his preliminary allocation of responsibility for the Skinner Site. Our understanding is that the preliminary allocation purports to find a very large orphan share at the Site. U.S. EPA does not know how that share was derived, which parties were determined to be orphans under the preliminary allocation, or their respective shares. Although some parties may disagree with Mr. Barkett's preliminary determinations, they will have an opportunity to produce evidence and argument with regard to the preliminary allocation report. Subsequently, after consideration of the evidence and argument submitted by the parties, Mr. Barkett is expected to issue a final allocation of responsibility for environmental response costs at Skinner.

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ADDITIONAL RESPONSE ACTIONS

U.S. EPA, perhaps also in conjunction with the State of Ohio, is currently planning to conduct the following additional response activities at the Site:

- (1) Implementation of the Remedial Design prepared by the AOC Respondents and approved by U.S. EPA for the Site; and
- (2) Provision of any monitoring, and operation and maintenance necessary at the Site after the remedial action is completed.

In addition to those response actions enumerated above, U.S. EPA may, pursuant to its authorities under CERCLA and other laws, decide that other clean-up activities are necessary to protect public health, welfare and the environment.

Unless U.S. EPA determines that a PRP or group of PRPs will voluntarily undertake the remedial action necessary at the Site, U.S. EPA is authorized by Section 104 of CERCLA to undertake the remedial action itself. Under Section 107 of CERCLA, U.S. EPA will seek reimbursement from PRPs of all costs incurred in connection with the action taken. Such costs may include, but are not limited to, expenditures for investigation, planning, response, and enforcement activities. Alternatively, under Section 106 of CERCLA, U.S. EPA may order PRPs to implement response actions deemed necessary by the U.S. EPA to protect the public health, welfare, or environment, should those PRPs decline to voluntarily undertake remedial action at the Site.

PRP DETERMINATION

Potentially responsible parties (PRPs) under Section 107 of CERCLA include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for the disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to a facility selected by such transporter. U.S. EPA has information indicating that you or your company (you) are a PRP with respect to the Site. The general sources of this information are briefly summarized in Paragraph 1 of Attachment A to this letter. By this letter,

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U.S. EPA reiterates its prior notification to you of your potential liability with regard to this matter and encourages you, as a PRP, to reimburse U.S. EPA for its costs incurred to date and to voluntarily perform or finance the response activities that U.S. EPA has determined are required at the Site.

It should be noted that this letter has been sent to certain municipalities, not previously given notice by U.S. EPA, which sent only municipal solid waste to the Site. These municipalities were named as defendants in the contribution lawsuit by the AOC Respondents. They are being sent this letter to enable them to negotiate a settlement of their liability with the Agency based upon U.S. EPA's Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites. Unless a municipality was previously sent a Notice of Potential Liability by the Agency, a municipality's receipt of this Special Notice letter does not signify a U.S. EPA determination that the municipal recipient of the letter disposed of other than municipal solid waste at the Site.

SPECIAL NOTICE

Pursuant to Section 122(e)(1) of CERCLA, U.S. EPA has determined that a period of negotiation may facilitate an agreement with you and other Skinner Landfill PRPs. On February 23, 1999, approximately 14 days from your receipt of this Special Notice, a period of 60 days will commence during which time you will have the opportunity to coordinate with any PRPs and to present to U.S. EPA a "good faith offer" for implementing and conducting the remedial action as described in the approved Remedial Design. In accordance with the requirements of CERCLA Section 122(e)(2), during this 60-day moratorium, U.S. EPA will not commence remedial action at the Site. U.S. EPA may, however, commence any additional studies or investigations authorized under CERCLA Section 104(b) during this negotiation period, or file cost recovery actions against those entities which fail to sign the enclosed tolling agreement (discussed subsequently).

U.S. EPA is initiating this 60-day period of negotiation regardless of the fact that Mr. Barkett has not issued his final allocation of responsibility at the Site. U.S. EPA is taking this step at this time due to the fact that the Remedial Design was completed in June 1996; as time passes, Site

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conditions could change, and require significant revisions to portions of the Design. In addition, the Agency has determined that the ADR allocation process has progressed sufficiently to allow meaningful negotiations between U.S. EPA and the Skinner PRPs.

If U.S. EPA receives from the Skinner Landfill Site PRPs within the 60-day period a written "good-faith offer," which demonstrates the PRPs' qualifications and willingness to conduct or finance the remedial action (RA) consistent with the Record of Decision and the approved Remedial Design, U.S. EPA may extend its moratorium on commencement of the remedial action work up to an additional 60 calendar days. The purpose of this additional 60 days is to allow the PRPs and U.S. EPA a period of time to finalize the settlement.

GOOD FAITH OFFER

A "good faith offer" for the RA shall include the following:

- * a statement of the PRPs' willingness to conduct or finance the RA, in a manner which is generally consistent with the Record of Decision and approved Remedial Design or which provides a sufficient basis for further negotiations in light of the Record of Decision and approved Remedial Design;
- * a detailed "workplan" identifying how the PRPs plan to proceed with the work (the work plan submitted as part of the approved Remedial Design is very general and will need to be supplemented to satisfy this criterion);
- * a demonstration of the PRPs' technical capability to undertake the RA, including either identification of the contractor that the PRPs expect will be retained by them to conduct the RA work or a statement of the process the PRPs will undertake to select a contractor;
- * a demonstration of the PRPs' capability to finance the RA;
- * a statement of the PRPs' willingness to reimburse U.S. EPA for past response costs and oversight costs; and

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* the name, address, and telephone number of the party or the steering committee who will represent the PRPs in negotiations.

If a "good faith" proposal is not received within the initial 60-day moratorium, U.S. EPA, pursuant to CERCLA Section 122(e)(4), may proceed immediately to undertake such further action as is authorized by law, including issuance of a UAO pursuant to Section 106(a) of CERCLA, which would mandate its respondents to implement the Remedial Design. Additionally, U.S. EPA may decide to execute the Remedial Design, utilizing public funds available to the Agency.

120-DAY DEADLINE

Except in extraordinary circumstances that are explained in a written request, no extension to the second 60-day moratorium period will be granted by U.S. EPA. As stated above, if no agreement can be reached, pursuant to CERCLA Section 122(e)(4), U.S. EPA may immediately proceed to undertake such further action as authorized by law to implement the remedial action at the Site.

ORPHAN SHARE

Pursuant to the Superfund reforms announced October 2, 1995, when U.S. EPA enters into settlements subsequent to this date for performance of RA at a site, U.S. EPA intends to compensate settlers for a portion of the shares specifically attributable to insolvent and defunct PRPs (known as the "orphan share"). U.S. EPA will account for the orphan share at a particular site by reducing the amount of U.S. EPA's past costs and future oversight costs that U.S. EPA will recover through the RA settlement for that site. For purposes of this Superfund reform, the term orphan share refers to that share of responsibility specifically attributable to identified parties whom U.S. EPA has determined are: (1) potentially liable; (2) insolvent or defunct; and (3) unaffiliated with any party which is potentially liable for response costs at a particular site. The term orphan share does not include shares due to: (1) unallocable waste; (2) the difference between a party's share and the amount that it is able to pay; and (3) those parties, such as de micromis contributors, municipal solid waste contributors, or certain lenders or residential

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homeowners, which U.S. EPA ordinarily would not pursue for response costs.

U.S. EPA believes that one or more PRPs at this Site are insolvent or defunct, and that the orphan share reform therefore applies at this Site. U.S. EPA, however, has not had an opportunity to independently analyze or confirm Mr. Barkett's recommendations, the basis for his recommendations, or if the estimate is otherwise reasonable. To the extent that Mr. Barkett has recommended that U.S. EPA pay a portion of total site costs equal to the entire orphan share, U.S. EPA rejects Mr. Barkett's recommendation as inconsistent with the Agency's orphan share policy.

However, subject to U.S. EPA's ability to confirm the orphan parties, if a PRP group is willing to enter into a negotiated consent decree for implementation of the Site remedy and for reimbursement of costs expended at this Site, then U.S. EPA will compensate a portion of the orphan share at this Site by reducing by \$2,275,000 its claim for past costs set forth in Paragraph 3 of Attachment A. Attachment A also discusses how the orphan share compensation offer was derived.

**AVAILABILITY OF DE MINIMIS SETTLEMENTS AND/OR SETTLEMENTS
PURSUANT TO THE AGENCY'S MUNICIPAL SETTLEMENT POLICY**

U.S. EPA is also aware that some parties are responsible for less than one percent of the total responsibility for response costs at the Site. Consistent with the provisions of Section 122(g) of CERCLA and the Agency's settlement policies favoring de minimis settlements, U.S. EPA is prepared to consider a de minimis settlement at the Skinner Landfill Site, preferably in the context of a global settlement for implementation of the RA at the Site. However, the Agency is presently unable to identify parties with any certainty.

If a group of de minimis PRPs chooses to organize itself and submit a settlement proposal to the Agency, U.S. EPA will consider that proposal on its merits. Such a proposal can be submitted either through the auspices of the AOC Respondents/Contribution Plaintiffs, or independently, and directly to the Agency. If a de minimis settlement were to be successfully concluded with the Agency, depending upon the settlement's covenant not to sue and "matters addressed" provisions, it may provide its signatories with protection from contribution

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claims, even for costs incurred prior to the effective date of the settlement.

U.S. EPA would also entertain a settlement proposal in accordance with the Municipal Settlement Policy from a group of municipalities qualifying for such a settlement. Again, however, such a settlement preferably would be finalized in the context of a global RA settlement.

DEMAND FOR COSTS INCURRED

As mentioned above, in accordance with CERCLA and other authorities, U.S. EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions are summarized in Paragraph 2 of Attachment A to this letter. The cost, as of July 31, 1997, of the response actions performed through U.S. EPA funding at the Site is approximately stated in Paragraph 3 of Attachment A. The Agency anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws. In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the amount specified in Paragraph 3 of Attachment A, plus any and all interest authorized to be recovered under Section 107(a) or under any other provisions of law. Pursuant to Section 107(a) of CERCLA, interest shall begin accruing as of the date of this demand, if payment of the amount set forth in Paragraph 3 of Attachment A is not received within thirty (30) days of the date of this letter. Demand is also hereby made under CERCLA and other authorities for payment of interest on all future costs that U.S. EPA may accrue in regard to the Site. If you choose to make payment to the Agency pursuant to this demand, please contact Assistant Regional Counsel Sherry L. Estes, whose address and telephone number are given at the conclusion of this letter, for payment instructions.

PRP LIST

U.S. EPA would like to encourage good faith negotiations between you and the Agency and among you and other PRPs for the Site. To assist the PRPs in negotiating with U.S. EPA concerning this matter, U.S. EPA is providing a list of the names and addresses of any other PRPs to whom this or a similar notification is being or has been sent. This list is appended as Attachment B to this letter. It should be noted that

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inclusion on or exclusion from the list does not constitute a final determination by the Agency concerning the liability of any party for remediation of Site conditions or payment of past costs. In order to effectively negotiate a settlement, it is important for the PRPs to organize themselves and establish a steering committee.

INITIAL PRP MEETING

To further facilitate your and the other PRPs' ability to present a "good faith offer" within the first 60-day time period, an initial settlement conference will be held. An agenda indicating the conference's time, place, and topics for discussion is appended as Attachment C. A proposed Consent Decree is also enclosed. Since there is an approved Remedial Design for this Site, a proposed Scope of Work (SOW) is not included, nor is it expected that a SOW will be negotiated. Instead, the proposed Consent Decree directs the Settling Defendants to implement the approved Remedial Design.

NOTIFICATION TO U.S. EPA/ TOLLING AGREEMENT

As a potentially responsible party, you should notify the U.S. EPA in writing within 14 days of your receipt of this letter of your willingness to participate in negotiations to perform or finance the activities described above. In order to allow these negotiations sufficient opportunity to be successful, a Tolling Agreement is enclosed, Attachment D. The Tolling Agreement will toll until October 31, 1999, whatever CERCLA statute of limitations might apply to U.S. EPA's recovery of its unreimbursed response costs for the Skinner Landfill Site. If you would like the opportunity to negotiate your liability at the Site with the Agency, you should implement the enclosed Tolling Agreements by executing two duplicate originals. Return the duplicate originals **by February 23, 1999** to Scott Hansen, Remedial Project Manager, whose address and telephone and facsimile numbers appear below. On behalf of U.S. EPA, the U.S. Department of Justice will then execute the Tolling Agreements, and return one of the fully-executed duplicate originals to you. If, however, U.S. EPA does not receive a response by the February 23rd deadline, the Agency will assume that you do not wish to negotiate a resolution of your potential responsibility in connection with the Site and that you have declined any

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involvement in performing the response activities. If you decide to attend the kick-off meeting discussed in Attachment C, you may also bring your executed Tolling Agreement to the meeting.

In addition to signing the enclosed Tolling Agreement, your response should indicate the appropriate names, addresses, and telephone numbers for further contact with you or your representatives. If you are already involved in discussions with state or local authorities, engaged in voluntary clean-up action or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise or direct you to restrict or discontinue any such activities; however, you are advised to report the status of those discussions or actions in the response to this letter and to provide a copy of the response to any other parties involved in those discussions or actions. The response letter should be sent to:

Scott Hansen
Superfund Division
Region 5
U.S. Environmental Protection Agency
P.O. Box 617695
Chicago, Illinois 60616-7695

-and-

Sherry L. Estes
Office of Regional Counsel (C-14J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Telefax (312) 886-0747

NATURAL RESOURCE TRUSTEE NOTIFICATION

By a copy of this letter, U.S. EPA is notifying the State of Ohio and the Natural Resources Trustees, in accordance with Sections 121(f) and 122(j) of CERCLA, respectively, of the Agency's intent to enter into negotiations concerning the implementation of remedial action at the Site, and is also encouraging them to consider participation in such negotiations.

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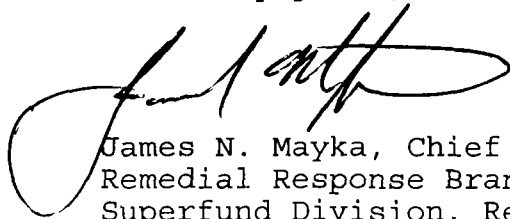
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FURTHER INFORMATION

If you need information regarding any technical issues raised by this letter, you may contact Scott Hansen, Remedial Project Manager for the Site, at (312) 886-1999. For legal questions, please contact, or ask your attorney to contact, Sherry L. Estes, Assistant Regional Counsel, at (312) 886-7164.

U.S. EPA strongly encourages you to take immediate steps to organize into a committee or committees with the other Skinner Landfill Site PRPs in order to negotiate an agreement with U.S. EPA to undertake the remedial actions at the Site. We hope that you will give this matter your immediate attention.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James N. Mayka", is written over the typed name and title.

James N. Mayka, Chief
Remedial Response Branch #2
Superfund Division, Region 5

Enclosures

cc: John Barkett
Mike Chezik, U.S. DOI
William Fischbein, Ohio EPA
Greg Youngstrom, Ohio EPA

ATTACHMENT A

1. U.S. EPA has evaluated a large body of evidence in connection with its investigation of the Skinner Landfill Site, including landfill ledgers, and responses to numerous information requests sent pursuant to Section 104(e) of CERCLA. U.S. EPA has also evaluated interviews and administrative depositions of fact witnesses, conducted both by U.S. EPA civil investigators and attorneys, as well as interviews of witnesses conducted by private civil investigators, employed by the AOC Respondents. Based on this evidence, U.S. EPA has information indicating that you are a potentially responsible party with respect to this Site. Specifically, with the exception of Ms. Elsa Skinner-Morgan, U.S. EPA has reason to believe that you: did, by contract, agreement, or otherwise, arrange for the disposal, treatment, or transportation for disposal or treatment of hazardous substances found at the facility. Ms. Skinner-Morgan is a potentially responsible party with regard to this Site due to her status as the owner and a past operator of the Site.

2. U.S. EPA has conducted the following response activities and studies in connection with the Site:

a. Testing of groundwater monitoring wells and private residential wells for volatile organic compounds, semi-volatile organic compounds, and metals on a number of occasions. Long-term, semi-annual monitoring of groundwater monitoring wells is on-going, although these activities are being conducted by the AOC Respondents.

b. Remedial Investigations to identify the local characteristics of the Site and to define the nature and extent of soil, air, surface water and ground water contamination at the Site.

c. A Feasibility Study evaluating the feasibility of possible remedial actions to remove or contain hazardous substances, pollutants, and contaminants at the Site.

3. Response Costs/Orphan Share Offer:

a. Response costs associated with the Site have been incurred by U.S. EPA. Total U.S. EPA costs incurred for the above referenced studies and activities through July 31, 1997, is approximately \$3,736,591. This is the amount demanded in the section of the letter, "Demand for Past Costs Incurred".

b. According to U.S. EPA's "Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Criticals Removals" (June 3, 1996), the maximum compensation available under this reform is the **least** of the following:

(1) The orphan share % of total site costs, which include: A) all unreimbursed past costs of U.S. EPA, B) ROD costs, and C) future oversight costs. (For instance, if the orphan share at a Site is equal to 20%, the orphan share compensation is 20% of the total of the amounts listed above.)

(2) 25% of ROD costs.

(3) EPA's total unreimbursed past costs plus future oversight costs.

c. Subject to U.S. EPA's ability to confirm the orphan share calculated by Mr. Barkett, U.S. EPA thinks that the applicable cap is 25% of the ROD costs. At this Site, due to certain changes made to components of the remedy selected in the ROD during the Remedial Design process, the estimate of the costs of the Remedial Action decreased from \$16 million (ROD estimate) to \$9.1 million (Final Remedial Design estimate).

d. $.25 \times \$9.1 \text{ million} = \$2,275,000$. This is the amount of U.S. EPA's past costs that will be forgiven if a group of PRPs decide to sign a Consent Decree to complete the Remedial Action, as implemented by the approved Remedial Design.

ATTACHMENT B PRP LIST

ABBOTT LABORATORIES
ROUTE 43 & BUCKLEY RD.
LAKE BLUFF, IL 60044

ATTN: STEPHANY TAYLOR, VP
ACME WRECKING CO., INC.
3111 SYRACUSE
WALNUT HILLS, OH 45206

MICHAEL G. LEIK/CHARLES M. MEYER
~~ACME WRECKING CO., INC.~~
SANTEN & HUGHES
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~~AERONCA, INC.~~
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ATTACHMENT B

PRP LIST

B & O RAILROAD COMPANY
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P.O. BOX 532
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MARY E. SCHULTZ
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SR. ENVIRONMENTAL COUNSEL
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ATTACHMENT B

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ATTACHMENT C

AGENDA FOR MEETING

Date: February 23, 1999

Time: 11:00 a.m.

Location: Andrew W. Breidenbach Environmental Research Center
26 W. Martin L. King Drive (auditorium)
Cincinnati, Ohio

Topics for discussion:

- *Relationship of Remedial Action Negotiations to Contribution Litigation/ADR Allocation Procedure
- *Liability of Responsible Parties to U.S. EPA Under CERCLA
- *Explanation of Expected PRP Response Activities
- *Structure of Consent Decree Negotiations
- *Orphan Share Offer
- *Possibility of De Minimis Settlements and Settlements under the Agency's Municipal Settlement Policy
- *Agency Enforcement Activities Should Negotiations Prove Unsuccessful

ATTACHMENT D
TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

This Tolling Agreement is made and entered by and between the United States and the Negotiating Potentially Responsible Parties (Negotiating PRPs), which are listed on Attachment A to this Agreement.

The United States contends that it has a cause of action against the Negotiating PRPs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 through 9675, to reimburse the United States for costs incurred by the United States Environmental Protection Agency (U.S. EPA) in connection with response actions taken at the Skinner Landfill Site (the Site), located in West Chester, Ohio. The U.S. EPA may ask the United States Department of Justice to file a complaint in the United States District Court for the Southern District of Ohio with respect to the alleged cause of action for, at a minimum, reimbursement of response costs incurred in connection with response actions taken at the Site.

The Parties to this Tolling Agreement desire to eliminate the need for, or to defer, any litigation of CERCLA claims relating to the Site without thereby altering the claims or defenses available to any party hereto, except as specifically provided herein.

The Parties enter into this Tolling Agreement to provide time to conduct good faith negotiations and, if appropriate, enter into an agreement that may resolve certain controversies between the Parties.

NOW THEREFORE, the United States and the Negotiating PRPs stipulate and agree as follows:

1. The Parties agree that, subject to the provisions of Paragraph 5, the period commencing on March 1, 1999 and ending on October 31, 1999, inclusive (the Tolling Period), will not be included in computing the running of any statute of limitations applicable to any action brought by the United States, on behalf of U.S. EPA, pursuant to CERCLA for costs incurred in connection with response actions taken at the Site (Tolled Claims).

2. The Parties further agree that any defenses or claims asserting laches, estoppel, waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.

3. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of The United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims.

4. This Tolling Agreement contains the entire agreement between the Negotiating PRPs, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in writing in this Tolling Agreement will be valid or binding. This Tolling Agreement may not be modified except in writing signed by all Negotiating PRPs and endorsed herein by the United States.

5. It is understood that the United States may terminate settlement negotiations and commence suit at any time upon notice to the Negotiating PRPs.

6. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document.

7. This Tolling Agreement is intended to be executed on separate signature pages.

TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

The United States Department of Justice consents to the terms and conditions of this
Tolling Agreement for the Skinner Landfill Superfund Site by its duly authorized representative
on this _____ day of _____ 1999.

By: _____
Benjamin Fisherow
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

TOLLING AGREEMENT
Skinner Landfill Superfund Site
Signature Page

TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

The authorized representative of _____ consents to the terms and conditions of this Tolling Agreement for the Skinner Landfill Superfund Site on this ____ day of _____, 1998.

Name of Individual or Entity

If Entity, Name of Authorized Representative

Signature of Authorized Representative

Title

Name and address where
any Notice should be sent:

TOLLING AGREEMENT
Skinner Landfill Superfund Site